

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re U. S. Patent No. 5,719,147**

**U. S. Serial No.: 08/525,259**

**Filed:** September 8, 1995

**For:** Morpholine and Thiomorpholine  
Tachykinin Receptor Antagonists

Assistant Commissioner for Patents  
Washington, D.C. 20231

**TERMINAL DISCLAIMER OF A PATENT GRANTED,  
UNDER 35 U.S.C. § 253 AND 37 C.F.R. § 1.321(a)**

The owner, Merck & Co., Inc., of one hundred percent interest in the instant patent, hereby disclaims, except as provided below, the terminal part of the statutory term as defined in 35 U.S.C. § 154 of the instant patent, such that the terminal part of the captioned patent does not run beyond the expiration dates of the full statutory terms of United States Patent Nos. 5,691,336 and 5,512,570 ("reference patents") as the terms of said reference patents are defined in 35 U.S.C. § 154, and as the terms of said reference patents may be shortened by any terminal disclaimer. The owner hereby agrees that the instant patent shall be enforceable only for and during such period that the instant patent and the reference patents are commonly owned. This agreement is binding upon the owner, its successors, or assigns.

In making the above disclaimer, the owner does not herein disclaim the terminal part of the term of the instant patent that would extend to the expiration date of the full statutory terms as defined in 35 U.S.C. § 154 of the reference patents in the event that any of said reference patents later expires for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321; has claims canceled by a reexamination certificate; is reissued; or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In making the above terminal disclaimer, the owner does not disclaim any part of the patent term extension to the instant patent granted by the PTO pursuant to 35 U.S.C. § 156.

The instant terminal disclaimer is solely for the purpose of obviating any allegation of non-statutory double patenting with respect to the reference patents. In making the above disclaimer, the owner does not admit, acquiesce, or concede that any claim of the instant patent is invalid, that the reference patents or their corresponding applications involve double patenting with respect to the instant patent, or that an allegation of double patenting is legally or factually supportable with respect to the instant patent. In making the above disclaimer, the owner does

not admit that the statutory term of the reference patents would run beyond that of the instant patent in the absence of the terminal disclaimer. The owner understands the statutory expiration dates of the reference patents presently to be March 4, 2014, and the statutory expiration date of the instant patent presently to be June 29, 2012. The above disclaimer does not raise a presumption or estoppel on the merits with respect to any double patenting allegation based on the reference patents.

Terminal disclaimer fee under 37 CFR 1.20(d) is included.

For this submission on behalf of Merck & Co., Inc., the undersigned is empowered to act on behalf of Merck & Co., Inc. pursuant to General Corporate Resolution #5 (enclosed).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

*Donna L. Margiutto*

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Oct. 23, 2009

Date

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